Supreme Court, U.S.
FILED
FEB 19 2002
CLERK

No. 01–419

IN THE

Supreme Court of the United States

CITY OF COLUMBUS, *et al.*,

Petitioners,

v.

OURS GARAGE AND WRECKER SERVICE, INC., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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Petition for Certiorari Filed September 7, 2001
Certiorari Granted January 4, 2002

24 pp

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RELEVANT DOCKET ENTRIES

BEFORE THE U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO EASTERN DIVISION
CASE NO. C2-99-310

1.	3/29/99	Complaint with Exhibits A through C.
2.	3/29/99	Motion by plaintiff Ours Garage & Wrecker and plaintiff Towing & Recovery Association for preliminary injunction.
3.	4/12/99	Memorandum In Opposition (with Exhibits A and B) by defendant to motion for preliminary injunction.
4.	5/10/99	Answer by defendant City of Columbus OH, defendant Thomas W. Rice Sr. and defendant Bobbie Beavers.
5.	5/17/99	Response (with Exhibits A through J) by defendant to motion for preliminary injunction.
6.	5/17/99	Motion by plaintiffs for summary judgment.
7.	5/21/99	Order by Magistrate Judge Norah M. King re pretrial conference.
8.	5/24/99	Motion (with Exhibits A through J) by defendant City of Columbus OH, defendant Thomas W. Rice Sr. and defendant Bobbie Beavers for summary judgment.
9.	6/1/99	Response by plaintiff Ours Garage & Wrecker and plaintiff Towing & Recovery Association to motion for summary judgment.

10.	11/5/99	Supplemental Authority by plaintiffs re response to motion for summary judgment, re motion for summary judgment and re motion for preliminary injunction.
11.	3/10/00	Order by Judge George C. Smith granting motion for summary judgment by plaintiff Ours Garage & Wrecker and plaintiff Towing & Recovery Association dismissing case.
12.	3/10/00	Judgment by Judge George C. Smith entered in favor of plaintiffs and against defendants dismissing case permanently and enjoining defendants from applying or enforcing Chapter 549 of the Columbus City Code with respect to the plaintiffs named in this action or any members of plaintiff Training & Recovery Association.
13.	3/20/00	Motion by defendant City of Columbus OH, defendant Thomas W. Rice Sr. and defendant Bobbie Beavers to stay injunction pending appeal.
14.	3/20/00	Notice of Appeal by defendant City of Columbus OH, defendant David Wilson, defendant Bobbie Beavers from District Court decision of 3/10/00.
15.	4/13/00	Response by plaintiffs to motion to stay injunction pending appeal.
16.	3/20/01	Order by Judge George C. Smith denying motion to stay injunction pending appeal.

17.	4/16/01	Record Certified to Sixth Circuit.

BEFORE THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT DOCKET NO. 00-3409

1.	4/5/00	Civil Case Docketed. Notice filed by Appellant City of Columbus, Appellant David Wilson and Appellant Bobbie Beavers.
2.	6/6/00	Proof Brief filed by Susan E. Ashbrook for Appellant Bobbie Beavers, Appellant David Wilson and Appellant City of Columbus.
3.	6/6/00	Request to require oral argument filed by Susan E. Ashbrook for Appellant Bobbie Beavers, Appellant David Wilson and Appellant City of Columbus.
4.	6/14/00	Brief filed by James G. Burkhardt for Amicus Curiae City of Toledo.
5.	7/14/00	Request to require oral argument filed by David A. Ferris for Appellee Towing & Recovery Association and Appellee Ours Garage & Wrecker.
6.	7/17/00	Proof Brief filed by David A. Ferris for Appellee Towing & Recovery Association and Appellee Ours Garage & Wrecker.

7.	8/2/ 0	Proof Reply Brief filed by Susan E. Ashbrook for Appellant Bobbie Beavers, Appellant David Wilson and Appellant City of Columbus.
8.	8/8/00	Appendix filed by Susan E. Ashbrook for Appellant.
9.	8/22/00	Final Brief filed by Susan E. Ashbrook for Appellant Bobbie Beavers, Appellant David Wilson and Appellant City of Columbus.
10.	8/22/00	Final Reply Brief filed by Susan E. Ashbrook for Appellant Bobbie Beavers, Appellant David Wilson and Appellant City of Columbus.
11.	8/29/00	Final Brief filed by David A. Ferris for Appellee Towing & Recovery Association and Appellee Ours Garage & Wrecker.
12.	3/21/01	Record requested from District Court.
13.	3/28/01	Oral argument date set for June 7, 2001, in court room 636. Notice of argument sent to counsel.
14.	4/17/01	Certified Record filed.
15.	4/26/01	Ruling granting motion to allow amicus curiae, City of Toledo, to appear filed by James G. Burkhardt.

16.	5/4/01	Joint Motion filed to waive oral argument and submit case on the briefs. Motion filed by Susan E. Ashbrook for Appellant Bobbie Beavers, Appellant City of David Wilson and Appellant Columbus; David A. Ferris for Appellee Towing & Recovery Association and Appellee Ours Garage & Wrecker.
17.	5/4/01	Supplemental Brief filed by Susan E. Ashbrook for Appellant Bobbie Beavers, Appellant David Wilson and Appellant City of Columbus.
18.	5/4/01	Supplemental Brief filed by David A. Ferris for Appellee Towing & Recovery Association and Appellee Ours Garage & Wrecker.
19.	5/4/01	Cause Submitted on briefs to panel consisting of Judges Keith, Batchelder, Moore sitting on 6/7/01.
20.	5/11/01	Order filed granting motion to waive oral argument and submit on briefs. Entered by order of the court.
21.	6/19/01	Opinion filed: Affirmed, decision for publication pursuant to local rule 206. Damon J. Keith, Circuit Judge, Alice M. Batchelder, Authoring Judge, Karen N. Moore, Circuit Judge.
22.	6/19/01	Judgment affirmed.

23.	6/22/01	Opinion Correction Letter sent indicating revisions to published opinion filed June 19, 2001.
24.	7/11/01	Mandate Issued with no cost taxed.
25.	7/11/01	Certified Record Returned to lower court at the end of appellate proceedings.
26.	9/12/01	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant City of Columbus, et al. Filed in the U.S. Supreme Court on 09-07-01.

[Filed Mar. 29, 1999]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

OURS GARAGE AND WRECKER SERVICE, INC., 121 Canal Street Hebron, Ohio 43025,	:	
and	:	
TOWING AND RECOVERY ASSOCIATION OF OHIO, 121 Canal Street Hebron, Ohio 43025,	:	
Plaintiffs,	:	
v.	:	Case No. C2 99-310
CITY OF COLUMBUS, OHIO,	:	Judge Smith
and	:	Magistrate Judge King
THOMAS W. RICE, SR., Individually and in his official capacity as DIRECTOR of PUBLIC SAFETY for the CITY OF COLUMBUS, 50 West Gay Street Columbus, Ohio 43215,	:	
and	:	

BOBBIE BEAVERS, :
Individually and in her official :
capacity as LICENSE :
SUPERVISOR of the PUBLIC :
SAFETY DEPARTMENT for :
the CITY OF COLUMBUS, :
240 Greenlawn Avenue :
Columbus, Ohio 43223, :
:
Defendants. :

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COME NOW the plaintiffs, Ours Garage and Wrecker Service, Inc. ("Ours") and Towing and Recovery Association of Ohio ("TRAO"), by and through their attorneys, and complaining against defendants, the City of Columbus, Ohio, Thomas W. Rice, Sr., individually and in his official capacity as Director of Public Safety for the City of Columbus, and Bobbie Beavers, individually and in her official capacity as License Supervisor of the Public Safety Department for the City of Columbus, states as follows:

1. Ours is a corporation, organized and existing under the laws of the State of Ohio, with its principal place of business located in Licking County, Ohio.

2. TRAO is a trade organization comprised of members conducting business in the towing and recovery industry. A membership list is attached and incorporated herein as Exhibit "A." TAO maintains its principal office in Licking County, Ohio.

3. The City of Columbus, Ohio is a political subdivision of the State of Ohio, organized and existing under the laws of the State of Ohio, and located in Franklin County, Ohio.

4. Thomas W. Rice, Sr. is the Director of the Public Safety Department for the City of Columbus, Ohio.

5. Bobbie Beavers is the License Supervisor of the Public Safety Department for the City of Columbus, Ohio.

6. This Court maintains jurisdiction and venue in this matter, because the actions which are the subject of this complaint pertain directly to application of the Interstate Commerce Act (the "ICA"), as amended by the Federal Aviation Administration Authorization Act of 1994 (the "FAAA Act") and the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), and their preemption of ordinances enacted by states and political subdivisions thereof to regulate consensual tow truck operations.

7. Defendants have implemented, and are currently enforcing, Chapter 549 of the Columbus City Code, entitled "Tow Trucks" (the "Towing Regulations"), which regulate consensual tow truck operations in violation of the ICA. Specifically, Section 549.02 provides, in pertinent part:

> ...No owner of a tow truck shall permit said tow truck to be used for the purpose of towing within the City limits unless a valid tow truck owner's license obtained pursuant to this chapter has been issued and is in force for that tow truck.
>
> No tow truck operator shall engage in the towing of any vehicle within the City of Columbus or offer such service to the owner or operator of any vehicle unless a valid tow truck operator's license obtained pursuant to this chapter has been issued and is in force for that tow truck operator...

A copy of Chapter 549, in its entirety, is attached and incorporated herein as Exhibit "B."

8. The ICA exempts consensual tow truck operations from regulation by states and political subdivisions thereof and states, in pertinent part:

> General Rule.— Except as provided in paragraphs (2) and (3), a State, [or a] political subdivision of a State, ...may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier...with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). This preemption clause is strengthened by Congress' addition of 49 U.S.C. § 14501(c)(2)(C), which states that section 14501(c)(1) does not apply to the authority of a state or a political subdivision to enact or enforce an ordinance relating to the price of towing services "if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle." 49 U.S.C. § 14501(c)(2)(C).

9. Columbus' Towing Regulations are related to the provision of consensual towing services, because Chapter 549 of the Columbus City Code, including, but not limited to, section 549.02, limits who is permitted to provide the services and requires that individuals and companies satisfy various criteria before they provide the services.

10. States and political subdivisions are preempted, by the ICA, in their enactment or enforcement of ordinances regulating consensual towing operations. *R. Mayer of Atlanta, Inc. v. City of Atlanta* (11th Cir. 1998), 1998 U.S. App. LEXIS 27886 (copy attached and incorporated herein as Exhibit "C").

11. Political subdivisions are preempted, by the ICA, in their enactment or enforcement of ordinances regulating safety or insurance requirements for motor carriers, including towing companies. 49 U.S.C. § 14501(c)(2)(A). *See also, R. Mayer of Atlanta, Inc., supra.*

WHEREFORE, plaintiffs, Ours Garage and Wrecker Service, Inc. and Towing and Recovery Association of Ohio, respectfully requests that this Court enter judgment on its behalf and that the Court:

(a) Preliminarily and permanently enjoin defendants, and their officers, agents, servants, employees, attorneys, and those in active concert or participation with them, from applying or enforcing Chapter 549 of the Columbus City Code; and

(b) Order whatever relief, legal or equitable, which this case warrants, including reasonable attorneys' fees and the costs of this action.

Respectfully submitted,

/s/ David A. Ferris

David A. Ferris (Ohio Atty. No. 0059804)
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Attorneys for the plaintiffs,
Ours Garage and Wrecker Service, Inc. and
Towing and Recovery Association of Ohio

[Filed May 10, 1999]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DISTRICT

OURS GARAGE AND WRECKER SERVICE, INC., et al.,	:	
	:	Case No. C2-99-310
Plaintiffs,	:	
	:	Judge Smith
v.	:	
	:	Magistrate Judge King
CITY OF COLUMBUS, OHIO, et al.,	:	
	:	
Defendants.	:	

DEFENDANTS' ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Now come Defendants, City of Columbus, Thomas W. Rice, Sr., and Bobbie Beavers, who answer and defend the Verified Complaint filed by Plaintiffs, Ours Garage and Wrecker Service, Inc. and Towing and Recovery Association of Ohio, as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs' Verified Complaint.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiffs' Verified Complaint.

3. Defendants admit the allegations contained in Paragraph 3 of Plaintiffs' Verified Complaint.

4. Defendants admit the allegations contained in Paragraph 4 of Plaintiffs' Verified Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of Plaintiffs' Verified Complaint.

6. Defendants admit that the actions which are the subject of Plaintiffs' Verified Complaint pertain directly to the application of the Interstate Commerce Act, as amended by the Federal Aviation Administration Authorization Act of 1994 and the Interstate Commerce Commission Termination Act of 1995, and deny the remaining allegations contained in Paragraph 6 of Plaintiffs' Verified Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiffs' Verified Complaint.

8. Defendants admit that the quoted language included in Paragraph 8 of Plaintiffs' Verified Complaint is accurately cited, however, Defendants deny the remaining allegations or implications that are created by the balance of Paragraph 8 of Plaintiffs' Verified Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of Plaintiffs' Verified Complaint.

10. Defendants deny the allegations contained in Paragraph 10 of Plaintiffs' Verified Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of Plaintiffs' Verified Complaint.

FIRST AFFIRMATIVE DEFENSE

12. Plaintiffs have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

13. Defendants are entitled to all applicable immunity, defenses, and limitations on liabilities as set forth in Chapter 2744 of the Ohio Revised Code and/or as recognized by state or federal law.

THIRD AFFIRMATIVE DEFENSE

14. Defendants reserve the right to assert additional defenses after discovery is completed.

WHEREFORE, having answered, Defendants specifically deny any and all allegations admitted to be true herein and respectfully request that Plaintiffs' Verified Complaint be dismissed with prejudice and costs assessed to Plaintiff.

Respectfully submitted,

CITY OF COLUMBUS, DEPARTMENT OF LAW
JANET E. JACKSON, CITY ATTORNEY

/s/ Kristine L. Hayes

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Trial Attorney for Defendants

[Filed May 17, 1999]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

OURS GARAGE AND WRECKER SERVICE, INC., et al.,	:	
Plaintiffs,	:	Case No. C2-99-310
v.	:	
CITY OF COLUMBUS, OHIO, et al.,	:	
Defendants.	:	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs, Our Garage and Wrecker Service, Inc. ("Ours") and Towing and Recovery Association of Ohio ("TRAO"), brought this action against defendants, the City of Columbus, Ohio ("Columbus"), Thomas W. Rice, Sr., individually and in his official capacity as Director of Public Safety for the City of Columbus, and Bobbie Beavers, individually and in her official capacity as License Supervisor of the Public Safety Department for the City of Columbus (collectively, the "defendants"), to prevent application, implementation and enforcement of Chapter 549 of the Columbus City Code (the "Towing Ordinance"), which violates the provisions of the Interstate Commerce Act ("ICA"), as amended by the Federal Aviation Administration Authorization Act of 1994 (the "FAAA Act") and the Interstate Commerce Commission Termination Act of 1995 (the "ICCTA"), preempting

regulation of towing operations by political subdivisions of a state.

Ours is an Ohio corporation conducting towing operations in and around the City of Columbus. TRAO, the other plaintiff in this proceeding, is comprised of members conducting tow truck operations within the State of Ohio, including, in some instances, Columbus. Members are affected by the Towing Ordinance, since it prohibits both consensual and non-consensual towing operations by any towing company not registered with Columbus as such. In order to obtain such registration, the towing companies must submit their equipment and drivers for examination by defendants and must pay a registration fee.

* * *

Defendants' towing regulations are preempted by 49 U.S.C. § 14501(c)(1), and no exceptions permit this type of local rule. The reasoning of the Eleventh Circuit in *R. Mayer of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538 (11th Cir. 1998), is concise and on point, as well as reflective of the Sixth Circuit's approach to preemption in other areas of law. The intent of Congress in deregulating the transportation industry and preempting state and local laws relating to price, route, or service was to create a level playing field on which all motor carriers could compete freely and without undue restraint. Defendants' towing regulations are an indication of the type of patchwork regulation Congress sought to avoid and, in fact, preempt. Plaintiffs are, therefore, entitled to summary judgment and injunctive relief against Defendants.

Respectfully submitted,

/s/ David A. Ferris

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and Towing and Recovery Association of
Ohio

[Filed May 24, 1999]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DISTRICT

OURS GARAGE AND WRECKER SERVICE, INC., et al.,	:	
	:	Case No. C2-99-310
Plaintiffs,	:	
	:	Judge Smith
v.	:	
	:	Magistrate Judge King
CITY OF COLUMBUS, OHIO, et al.,	:	
	:	
Defendants.	:	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Now comes defendants, City of Columbus, Thomas W. Rice, Sr., and Bobbie Beavers; pursuant to Civ. R. 56(B), to respectfully move this Court for a summary judgment of dismissal. From the pleadings and evidence properly before this Court, movant submits that there are no genuine issues as to any material fact and that defendant is entitled to summary judgment as a matter of law. The basis for this motion is more fully and completely set forth in the attached Memorandum of Support.

Respectfully submitted,

CITY OF COLUMBUS,
DEPARTMENT OF LAW
JANET E. JACKSON, CITY
ATTORNEY

/s/ Kristine L. Hayes
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Columbus, Ohio 43215

Trial Attorney for Defendants

[Filed Mar. 10, 2000]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

OURS GARAGE &
WRECKER SERVICE,
et al.,

Plaintiff,

v.s.

CITY OF COLUMBUS,
et al.,

Defendant.

Case No. C2-99-0310

Judge Smith
Magistrate Judge King

[ ] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

[ ] Decision by Court. This action was decided by the Court without a trial or hearing.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed March 10, 2000, FINAL JUDGMENT is hereby entered in favor of plaintiffs, and against defendants, permanently enjoining defendants from applying or enforcing Chapter 549 of the Columbus City Code with respect to the plaintiffs named in this action or

any members of the plaintiff TRAO. This action is dismissed.

Date: March 10, 2000

KENNETH J. MURPHY
CLERK

/s/ G. Wellman
By / Deputy Clerk

**IN THE SUPREME COURT
OF THE UNITED STATES**

[Caption Omitted in Printing]

Order Granting Petition for a Writ of Certiorari entered on January 4, 2002.